

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES
COLUMBUS, OHIO 43215-6131

Order No. 13-022

**IN THE MATTER OF: SOMOLEND HOLDINGS, LLC;
 CANDACE S. KLEIN**

NOTICE OF OPPORTUNITY FOR HEARING

NOTICE OF INTENT TO ISSUE CEASE AND DESIST ORDER

DIVISION ORDER

WHEREAS, the Ohio Division of Securities (the "Division") is charged with the responsibility of protecting investors and finds that this Order is necessary or appropriate in the public interest or for the protection of investors, and is consistent with the purposes of the Ohio Securities Act, Chapter 1707 of the Ohio Revised Code ("R.C.");

WHEREAS, the Division has conducted an investigation into the activities of SoMoLend Holdings, LLC and Candace S. Klein (collectively "Respondents"), who maintain a primary business address at 20-22 West 12th Street, Unit 101A, Cincinnati, Ohio 45202; and

WHEREAS, as a result of said investigation, the Division alleges as follows:

I. BACKGROUND INFORMATION

- (1) Respondent SoMoLend Holdings, LLC ("SoMoLend") is a Delaware limited liability company with Registration of a Foreign Limited Liability Company filed with the Ohio Secretary of State on December 14, 2011;
- (2) SoMoLend is a for-profit holding company that owns an online crowdfunding platform at the website addresses www.somolend.com and <http://crowd.somolend.com>. These websites are operated by SoMoLend, LLC, a wholly owned subsidiary of SoMoLend;
- (3) The website at www.somolend.com provides an online, web and mobile based, peer-to-peer lending technology that allows businesses to borrow from other businesses or individual lenders in exchange for an interest-

rate return on the principal loan amount (the "SoMoLend Crowdfunding Platform");

- (4) Respondent Candace S. Klein is the majority owner and Chief Executive Officer of Respondent SoMoLend and an attorney licensed to practice law in the Commonwealth of Kentucky;
- (5) Respondents' business model involves publishing loan requests from business issuers on the SoMoLend Crowdfunding Platform, selling promissory notes of the business issuers to institutional or individual investors across the SoMoLend Crowdfunding Platform, and then servicing the repayment of principal and interest on the notes from the issuers to the investors through the SoMoLend Crowdfunding Platform;
- (6) As stated on www.somolend.com, the SoMoLend Crowdfunding Platform "can be accessed by business borrowers who need funding for their small business or startup and investors seeking higher than public market rates of return. Investors lend money directly to borrowers through SoMoLend, which packages the loans and sell [sic] them as notes, bypassing the need for banks and credit-card issuers";
- (7) The business issuers seeking to use the SoMoLend Crowdfunding Platform to sell notes are referred to by the Respondents as "borrowers" ("Borrowers"). The institutional and individual investors seeking to use the SoMoLend Crowdfunding Platform to purchase notes are referred to by the Respondents as "lenders" ("Lenders");
- (8) During all times relevant, Respondents have maintained a principal place of business in Ohio, initially at 1220 Vine Street, Suite 5, Cincinnati, Ohio, and currently at 20-22 West 12th Street, Unit 101A, Cincinnati, Ohio;
- (9) To raise capital in Ohio for the SoMoLend Crowdfunding Platform start-up, Respondents filed with the Division two Form D Notices of Sale of Securities, pursuant to 17 C.F.R. 230.506 ("Rule 506") and R.C. 1707.03(X), claiming exemption from registration for their two offerings of debt securities and options, warrants or other rights to acquire another security issued by Respondent SoMoLend ("SoMoLend Securities");
- (10) The SomoLend Securities are securities as defined in R.C. 1707.01(B) and were offered for sale and sold by the Respondents as defined by R.C. 1707.01(C)(1);
- (11) The first Form D was filed with the Division on September 12, 2011 ("2011 Form D") for a total offering amount of \$750,000 and the second Form D was filed on February 20, 2013 ("2013 Form D") for a total offering amount of \$1,000,000;

- (12) Both the 2011 and 2013 Form Ds listed Respondents' principal place of business as 1660 West 2nd Street, Suite 1100, Cleveland, Ohio 44113 and both bore the electronic signature of Respondent Klein as Manager and Chief Executive Officer for Respondent SoMoLend;
- (13) The 2011 Form D was timely filed, but was not properly amended following the April 4, 2012 amendment filed with the United States Securities and Exchange Commission ("SEC"). The April 4, 2012 amendment raised the total offering amount from \$750,000 to \$1,170,000;
- (14) The 2013 Form D was untimely filed nearly six months after the first date of sale on August 31, 2012, in violation of R.C. 1707.03(X)(1);
- (15) Between September 2, 2011 and February 27, 2013, the Respondents sold SoMoLend Securities to thirty-one investors for an aggregate sale price of \$2,180,000;

II. UNREGISTERED SALES OF SOMOLEND SECURITIES

- (16) Unregistered sales of securities claiming the exemption from registration provided under R.C. 1707.03(X) must comply with Rules 501 to 503 and Rule 506 of Regulation D promulgated under the Securities Act of 1933;
- (17) Rule 502(c) of Regulation D states, "Except as provided in Rule 504(b)(1), neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including but not limited to the following: 1. Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and 2. Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;
- (18) One of the benchmarks of a general solicitation is contacting potential investors with no previous relationship to the issuer or persons promoting the offering;
- (19) Beginning on or around April 9, 2011, up to and including the date of this Notice Order, Respondents have offered SoMoLend Securities for sale through general solicitation and general advertising in Ohio and other states. Said solicitation and advertising have occurred through Respondents' own actions as well as through the actions of others on Respondents' behalf through numerous investor presentations and investor pitch events, videotaped recordings of investor presentations and investor pitch events posted to the internet, content and links on Respondents' websites and social media sites, and press releases and

other communications published in newspapers, magazines, and other broadcast media;

- (20) Respondents have personally solicited and effectuated sales of SoMoLend Securities at or as a result of multiple investor presentations or pitch events both within and outside of Ohio. In at least six such presentations and events, Respondent Klein's solicitations were videotaped and subsequently published to the internet: (a) an April 19, 2011, presentation to the Greater Cincinnati Venture Association ("GCVA Presentation"); (b) a May 3, 2012 presentation at the Business Insider Startup Pitch Competition ("Business Insider Pitch"); (c) a May 9, 2012 presentation at the Finovate Spring 2012 event ("Finovate Pitch"); (d) a July 26, 2012 presentation at the Grow America Springboard event ("Grow America Presentation"); (e) the October 4, 2012 presentation and interview at the Silicon Valley Bank Showcase Event ("SVB Pitch" and "SVB Interview"); and (f) a March 10, 2013 presentation at the Springboard Dolphin Tank Event at the SXSW Interactive Festival ("SXSW Pitch");
- (21) Respondents affirmatively posted links to several of the aforementioned videotaped presentations to their own business and social media websites, including but not limited to the addresses <http://blog.somolend.com> ("SoMoLend Blog") and www.candaceklein.com, and issued at least one press release directing readers to view an online pitch presentation;
- (22) Respondents also participated in the drafting and subsequent issuance of a September 12, 2011 press release issued by CincyTech, an early investor in SoMoLend. The press release announced CincyTech's investment in SomoLend and solicited additional investors for the \$440,000 remaining in the offering. The CincyTech Release was published on CincyTech's website and was subsequently covered or republished by several news outlets. Respondent Klein provided a quote for inclusion in CincyTech Release and Respondents' business records include a September 9, 2011 draft of the release entitled "CincyTech-SoMoLend investment-CSK edits.doc";
- (23) Respondents maintain a list of investor prospects to whom pitch presentations have been made. Some or all of these investor prospects are provided access to a due diligence drop box ("Drop Box") to which Respondents post a variety of information regarding SoMoLend. As of March 6, 2013, the list identified approximately 229 potential investors, many of whom are described in the list as having no pre-existing relationship with Respondents;

- (24) Based on paragraphs 1 through 23, the Respondents and agents acting on their behalf offered for sale and sold SoMoLend Securities by means of general solicitation and general advertising and, therefore, have failed to comply with the requirements of Rules 506 and 502(c). Consequently, SoMoLend Securities do not qualify for the exemption from registration under R.C. 1707.03(X)
- (25) R.C. 1707.44(C) provides that no person shall knowingly sell, cause to be sold, offer for sale, or cause to be offered for sale, any security which is not properly registered with the Division, or exempt from registration;
- (26) Based on paragraphs 1 through 25, Respondents knowingly offered for sale and sold securities which were not registered with the Division and were not exempt from registration in violation of R.C. 1707.44(C)(1);

III. SECURITIES FRAUD

- (27) R.C. 1707.01(J) provides the following definition: "Fraud,' 'fraudulent,' 'fraudulent acts,' 'fraudulent practices,' or 'fraudulent transactions' means anything recognized on or after July 22, 1929, as such in courts of law or equity; any device, scheme, or artifice to defraud or to obtain money or property by means of any false pretense, representation, or promise; any fictitious or pretended purchase or sale of securities; and any act, practice, transaction, or course of business relating to the purchase or sale of securities that is fraudulent or that has operated or would operate as a fraud upon the seller or purchaser.";
- (28) At various events, including but not limited to the presentations described in paragraph 20, Respondents made false statements to and engaged in other fraudulent activity geared toward investors and prospective investors for the purpose of selling SoMoLend Securities. The statements and related activity include but are not limited to: (1) fraudulent financial projections; (2) false and misleading statements regarding current and past performance, such as the number of loans that had been transacted on the platform, the total value of loans transacted on the platform, and the total revenue inuring to Respondents as the result of the loan transactions; (3) false and misleading statements regarding the true nature and extent of relationships Respondents have with banks and other institutions; and (4) other material omissions of fact;
- (29) Respondents made the foregoing false statements and engaged in the fraudulent activity to dupe investors into believing that SoMoLend was an early and huge crowdfunding success. Respondents repeatedly stated they had already conducted millions of dollars of transactions on the

SoMoLend Crowdfunding Platform by 2012, which they had not done and could not legally do pursuant to applicable securities laws and regulations at that time;

A. FRAUDULENT FINANCIAL PROJECTIONS

- (30) Beginning no later than 2011, Respondents have routinely included projections of the future financial performance of SoMoLend in pitch presentations and in written materials distributed to investors and potential investors through slide decks, business plans, executive summaries, and pro forma financial statements;
- (31) The financial performance metrics projected by the Respondents and provided to investors and potential investors typically include breakeven date, exit values, return on investment, and the following metrics broken out by 2-year monthly and 5-year annual projections: number of loan transactions, average loan size, transaction fees, gross revenue, net income, total expenses, and profit;
- (32) By way of example, on April 19, 2011 during the GCVA Presentation, Respondent Klein projected annual revenues of \$1.5 million in 2012, \$10.2 million in 2013, \$15.5 million in 2014, and \$45.5 million in 2015. Respondent Klein projected that Respondent SoMoLend would "breakeven," commonly understood to mean the first point at which revenues would equal expenses, in the third quarter of 2012. At the time of the GCVA Presentation, Respondents had not conducted a single loan transaction or obtained licensure or registration necessary to conduct their proposed business activities;
- (33) Also in the GCVA Presentation, Respondent Klein projected "exit values," commonly understood to mean the price at which a company might be sold to a hypothetical third-party buyer, to be \$66.0 million in 2014, representing a 4,400% return to investors, or \$182.0 million in 2015, representing a 12,100% return to investors. There is no indication that, at the time of the GCVA Presentation, Respondents had obtained an independent valuation of SoMoLend, or had engaged in negotiations with any potential buyers to substantiate these values;
- (34) Approximately one year later, in a March 21, 2012 post on the SoMoLend Blog, Respondents stated that SoMoLend would meet its 2012 financial goals through a \$10 million regional project in Northern Kentucky involving 580 loans. As of the date of this Notice Order, only one transaction has been completed by a member of the "Northern Kentucky Alliance.";
- (35) During the SVB Pitch given a few months later on October 4, 2012, Respondent Klein significantly increased the 2015 revenue projections,

stating: "we will be generating approximately \$71 million in revenue by 2015," even though the SEC had not proposed, much less implemented, rules authorizing crowd funding transactions.;

- (36) Respondents made similar projections and related statements in materials provided by Respondents to their investors and potential investors in the Drop Box folder entitled "SoMoLend Business Plan." One of the charts included in the folder projected SoMoLend would exceed \$1 billion in transaction volume by year 4, resulting in estimated revenues of \$45 million and over \$6 million in profit. Other materials in the drop box, including a more recent pitch presentation slide deck titled "Abbreviated Investor Deck 2.1.13" showed annual total revenues of \$44,798 in 2012, \$1,766,400 in 2013, \$16,922,000 in 2014, \$49,300,000 in 2015, and \$71,000,000 in 2016. The slide deck also showed annual profits of \$(1,098,517) in 2012, \$(3,409,693) in 2013, \$2,133,170 in 2014, \$23,298,000 in 2015, and \$35,846,250 in 2016;
- (37) By Respondent Klein's own admission, "...five-year projections are typically a shot in the dark for a start-up company...". Respondent Klein stated at the GCVA Presentation, "Five year projections – how many of you just cringe when you see five year projections? I don't know how to do five year projections, so if I don't, I'm sure you don't. And it is an art; it's not a science. What I would tell you is, know rock-solid your next eighteen months. Know how you're going to get your sales for your next eighteen months, and quite honestly, everyone else knows you're guessing after that."
- (38) Notwithstanding Respondent Klein's admissions that five-year projections for a start-up are typically a shot in the dark, Respondents repeatedly presented five-year projections indicating millions in annual profit and anticipated returns to prospective SoMoLend investors of up to 12,100%. As Respondent Klein explained during a February 6, 2013 presentation entitled "Secrets of the 5-Minute Pitch": "Always appeal to their greed first. If you always appeal to your audience's greed first, then you can never fail." Respondent Klein has given variations of this "appeal to their greed" presentation on multiple occasions;
- (39) As of the date of this notice, Respondent SoMoLend has not broken even, has not met its financial projections for 2011 and 2012, and is not on pace to meet its financial projections for 2013. Far from the millions that Respondents repeatedly asserted SoMoLend would produce in the short term, SoMoLend has brought in only \$3,404 in revenue to date;
- (40) The Respondents' financial projections as described above were not accompanied by cautionary language or risk factors, were not accompanied by disclosure of the assumptions made or methods used in

deriving the projected figures, and were not accompanied by disclosure of the facts, data, or information relied upon in making the underlying assumptions, or of the sources of any such facts, data, or information, if any;

- (41) The Respondents' statements regarding their future financial performance as set forth above were not made in good faith and lacked a reasonable basis in fact when made;
- (42) Based on paragraphs 1 through 15, and 30 through 41, Respondents violated R.C. 1707.44(G) by knowingly engaging in acts or practices defined as fraudulent or prohibited in Chapter 1707 in connection with the sale of securities;

B. FALSE STATEMENTS REGARDING CURRENT AND PAST PERFORMANCE

- (43) From the company's launch in 2011 to March 7, 2013, Respondents generated a total of \$3,404 in revenue as the result of twenty-five transactions for eighteen companies totaling \$234,000 on the SoMoLend Crowdfunding Platform;
- (44) Respondents have repeatedly and publicly cited significantly higher, false performance figures in investor pitches and interviews, many of which have been videotaped and published to the internet, in an effort to complete its offerings of SoMoLend Securities;
- (45) In the October 4, 2012 SVB Pitch and SVB Interview, for example, Respondent Klein falsely claimed SoMoLend had closed on 31 loans for just under 50 businesses. According to Respondent Klein, the loans totaled \$3.5 million and purportedly generated \$50,000 in revenue. SoMoLend at that time had closed only 13 loans for 9 businesses totaling \$94,000, and generating \$3,404 in revenue;
- (46) More recently, in March of 2013, Respondent Klein falsely stated that SoMoLend had raised \$15 million for businesses, a significant jump from the \$3.5 million figure previously cited. Respondent Klein also artificially doubled the number of businesses receiving loans from the figure of 50 to the figure of 100. These false statements were made in a March 4 interview with Entrepreneur Magazine, which was subsequently published on www.entrepreneur.com, and the SXSW Pitch on March 10. SoMoLend at that time had closed only 25 loans for 18 businesses for an aggregate loan amount of only \$234,000;
- (47) The representations Respondents made to its investors, potential investors, Borrowers and Lenders, potential Borrowers and Lenders, and

the public at large, as described in paragraphs 20 and 43 through 46, concern material and relevant facts related to the Respondents' current and past performance, including specific false statements regarding the size, scope, and volume of operations;

- (48) R.C. 1707.44(B)(4) states in relevant part, "No person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the following purposes: (4) selling any securities in this state";
- (49) Based on paragraphs 1 through 15, 20, and 43 through 48, Respondents violated R.C. 1707.44(B)(4) by knowingly making false representations of material and relevant facts for the purpose of selling securities in the State of Ohio;
- (50) Based on paragraphs 1 through 15, 20, and 43 through 49, Respondents violated R.C. 1707.44(G) by knowingly engaging in acts or practices defined as fraudulent or prohibited in Chapter 1707 in connection with the sale of securities

C. FALSE AND MISLEADING STATEMENTS REGARDING NATURE AND EXTENT OF BUSINESS RELATIONSHIPS

- (51) Respondents also made false and misleading statements to investors regarding the true nature and extent of various business relationships, particularly relationships with various banking and financial institutions to bolster SoMoLend's current and future performance.
- (52) During the March 10, 2013 SXSW Pitch, for example, Respondent Klein touted SoMoLend's partnership with 50 different banks, stating: "Our platform is about six months old, and since that time we've had 15,000 businesses sign up for funding on our platform. We've funded them with about \$15 million so far, and that's come from 1,000 peer lenders and 50 different banks...";
- (53) Similarly, on April 9, 2013, Respondent Klein stated "we have about 43 banks lending on our platform" in a public webinar entitled "Funding Opportunities for Small Businesses";
- (54) At the time of Respondent Klein's March and April 2013 statements, only one bank had ever made a loan on the SoMoLend Crowdfunding Platform, a single \$30,000 loan that generated zero revenue;
- (55) Respondents also made misleading statements regarding an alleged infusion of business SoMoLend received by partnering with the peer-to-

peer lending platforms Prosper and Lending Club. At the October 2012 SVB Pitch, for example, Respondent Klein stated: "[W]e've also found a way to partner with Prosper and Lending Club. Yes, they are turning down three to five thousand commercial borrowers per month, per site, and we've now taken that off their hands." There is no indication that the purported peer-to-peer business relationships ever resulted in thousands of additional borrowers on the SoMoLend Crowdfunding Platform. As of May 15, 2013, Respondents reported that the SoMoLend Crowdfunding Platform had approximately 1,300 Borrowers;

- (56) Respondents also made misleading statements regarding other strategic alliances suggesting that millions of dollars of loans were in the works such that SoMoLend would finally meet its published financial goals. In a March 21, 2012 post on the SoMoLend Blog, for example, Respondents stated "we have now formed an alliance in Northern Kentucky, whereby the ten largest community banks have agreed to create a fund of \$10 million ..." and stated further, "This regional project brings both lenders and borrowers, and should allow us to secure approximately 580 loans in 2012, allowing us to meet our financial goals for the year with just this project." As of the date of this Notice Order, only one transaction has been completed by a member of the "Northern Kentucky Alliance";
- (57) The representations Respondents made to its investors, potential investors, Borrowers and Lenders, potential Borrowers and Lenders, and the public at large, as described in paragraphs 1 through 15, 20, and 51 through 56, concern material and relevant facts related to the Respondents' business relationships and related performance;
- (58) R.C. 1707.44(B)(4) states in relevant part, "No person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the following purposes: (4) selling any securities in this state";
- (59) R.C. 1707.44(G) states, "No person in purchasing or selling securities shall knowingly engage in any act or practice that is, in this chapter, declared illegal, defined as fraudulent, or prohibited.";
- (60) Based on paragraphs 1 through 15, 20, and 51 through 59, Respondents violated R.C. 1707.44(B)(4) and 1707.44(G) by knowingly making false representations of material and relevant facts for the purpose of selling securities in the State of Ohio and by knowingly engaging in acts or practices declared illegal, defined as fraudulent, or prohibited in Chapter 1707 in connection with the sale of securities;

D. OTHER MATERIAL OMISSIONS

- (61) Early in SoMoLend's operations, on or about October 14, 2011, Respondents met with Division personnel and other government officials to discuss Respondents' intended business model and applicable state and federal licensure and registration requirements for crowdfunding activities ("2011 Meeting");
- (62) During the 2011 Meeting, Respondents were notified and acknowledged that if they were to receive a fee, commission or other remuneration in connection with the solicitation or sale of securities, they would be required to first obtain a securities dealer and salesperson license from the Division pursuant to R.C. 1707.14 and R.C. 1707.16, as well as applicable licenses from the SEC and/or FINRA;
- (63) During the 2011 Meeting, the Respondents were further notified and acknowledged that if businesses offered for sale or solicited the sale of securities on the SoMoLend Crowdfunding Platform, those issuers must first be registered by the Division or take such steps as are necessary to qualify for an exemption from registration under the Ohio Securities Act and the federal Securities Act of 1933;
- (64) The disclosure document provided by the Respondents to potential investors, known as "Exhibit D" to the SoMoLend Holdings, LLC Secured Promissory Note Subscription Agreement, failed to disclose that the intended business activity of the Respondents was not legal without proper licensure, may never become legal without proper licensure, and that the Respondents had not obtained the licensure required to lawfully conduct their intended business operations. These omissions concerned material and relevant facts related to Respondents' business;
- (65) The intended business activity of the Respondents requires both federal and state licensure as a broker-dealer to conduct lawfully, and Respondents do not hold, and have never held, such licensure;
- (66) R.C. 1707.44(G) states, "No person in purchasing or selling securities shall knowingly engage in any act or practice that is, in this chapter, declared illegal, defined as fraudulent, or prohibited.";
- (67) Based on paragraphs 1 through 15, 20, and 61 through 66, Respondents violated R.C. 1707.44(G) by knowingly engaging in acts or practices declared illegal, defined as fraudulent, or prohibited in Chapter 1707 in connection with the sale of securities;

IV. OFFERS AND SALES OF UNREGISTERED SECURITIES THROUGH THE SOMOLEND CROWDFUNDING PLATFORM

- (68) As set forth in paragraphs 61 through 63, Respondents were aware and affirmatively acknowledged to the Division as early as October 14, 2011 that businesses offering for sale or soliciting the sale of securities on the SoMoLend Crowdfunding Platform would be required to register their offering with the Division or take such steps as are necessary to qualify for an exemption from registration;
- (69) In a letter dated March 7, 2013 and signed by Respondent Klein ("March 7 Letter"), Respondents admit they published loan applications and offering information pertaining to approximately 198 Borrowers on the SoMoLend Crowdfunding Platform. The Respondents did not remove this information until at least November, 2012;
- (70) In the March 7 Letter, Respondents admit that six transactions were completed on the SoMoLend Crowdfunding Platform as a result of their publication of the offering information of the 198 Borrowers;
- (71) Of the approximately 198 Borrowers identified by Respondents, only three have made any filings with the Division as of the date of this Notice Order;
- (72) In the March 7 Letter, Respondents also admit that on or about January 23, 2013, Respondents sent a mass email to Lenders highlighting ten select Borrower profiles ("January 23 Email"). Documents provided by Respondents reveal that the January 23 Email was sent to approximately 849 Lenders and included the amount of money sought by the Borrower and a link to each Borrower's loan application. None of the Borrowers highlighted in the Respondent's January 23 Email have made any filing with the Division;
- (73) In April 2013, Respondents launched a new strategy focused on increasing the volume of "Friends and Family" loans closed on the SoMoLend Crowdfunding Platform. During the "pilot" phase of this new strategy, the Respondents selected ten Borrowers to highlight on a website other than the original www.somolend.com. This new website is located at the address <http://crowd.somolend.com>. Only one of the disclosed Borrowers selected by the Respondents to participate in the "Friends and Family Funding" program has made any filing with the Division;
- (74) The promissory notes offered and sold by the Borrowers and described in paragraphs 3, 5, 6, 7, 69, 70, 72 and 73 are securities as defined in R.C. 1707.01(B);

- (75) Securities of at least 198 Borrowers were offered for sale or sold by the Respondents as defined in R.C. 1707.01(C)(1) by means of general advertising or general solicitation;
- (76) R.C. 1707.44(C)(1) provides that "[n]o person shall knowingly sell, cause to be sold, offer for sale, or cause to be offered for sale, any security which" is not properly registered with the Division, or exempt from registration;
- (77) Based on paragraphs 3, 5, 6, 7 and 68 through 77, Respondents knowingly offered for sale and sold securities which were not registered with the Division and were not exempt from registration in violation of R.C. 1707.44(C)(1);
- (78) Not only have Respondents violated R.C. 1707.44(C)(1) as the result of the foregoing misconduct, they have also exposed approximately two hundred small business issuers to potential liability under R.C. 1707.44(C)(1) and R.C. 1707.43 as well;

V. UNLICENSED OFFERS AND SALES OF SECURITIES ON THE SOMOLEND CROWDFUNDING PLATFORM

- (79) As set forth in paragraphs 61 through 63, Respondents were aware and affirmatively acknowledged to the Division as early as October 14, 2011 that their intended business model required state and federal securities licensure prior to accepting a fee, commission or other remuneration in connection with transactions occurring on the SoMoLend Crowdfunding Platform;
- (80) Notwithstanding their knowledge regarding the illegality and consequences for accepting such fees, Respondents charged and received transaction-based compensation in the amount of \$3,404 in connection with the sale of securities in ten transactions that occurred between June and August of 2012. The fees correspond to Respondents' 5.8% transaction fee of which 4% is charged to the Borrower and 1.8% is charged to the Lender;
- (81) R.C. 1707.01(E)(1) defines "Dealer" to include "every person, other than a salesperson, who engages or professes to engage, in this state, for either all or part of the person's time, directly or indirectly, either in the business of the sale of securities for the person's own account, or in the business of the purchase or sale of securities for the account of others in the reasonable expectation of receiving a commission, fee, or other remuneration as a result of engaging in the purchase and sale of securities.";

- (82) Pursuant to R.C. 1707.14(A)(1), no person shall act as a dealer, unless the person is licensed as a dealer by the division of securities, except when the person qualifies for an applicable exemption from licensure;
- (83) R.C. 1707.01(F)(1) defines "salesperson" as "every natural person, other than a dealer, who is employed, authorized, or appointed by a dealer to sell securities within this state.";
- (84) Pursuant to R.C. 1707.16(A)(1), "Every salesperson of securities must be licensed by the division of securities and shall be employed, authorized, or appointed only by the licensed dealer specified in the salesperson license.";
- (85) Acting as a dealer or salesperson without an effective license issued by the Division and without qualifying for an applicable exemption from licensure is prohibited by R.C. 1707.44(A)(1);
- (86) Neither Respondent SoMoLend Holdings, LLC nor Respondent Klein have ever been licensed as a dealer or salesperson by the Division; and
- (87) Based on paragraphs 1 through 15, 68, 69, 70, 72 through 75, and 79 through 86, Respondent SoMoLend Holdings, LLC and Respondent Klein have engaged in acts and practices in violation of R.C. 1707.44(A)(1).

WHEREAS, based on the foregoing, the Division alleges that Respondents violated R.C. 1707.44(A)(1), R.C. 1707.44(B)(4), R.C. 1707.44(C)(1), and R.C. 1707.44(G);


THEREFORE, IT IS ORDERED THAT, pursuant to Chapter 119 of the Ohio Revised Code, Respondents SoMoLend Holdings, LLC and Candace S. Klein are hereby notified that thirty (30) days from the date of mailing of this Notice, the Division, pursuant to R.C. 1707.23(G), intends to issue an Order to **CEASE AND DESIST** from the acts and practices as described above which constitute a violation of Chapter 1707 of the Ohio Revised Code.

FURTHER, IT IS ORDERED THAT, pursuant to Ohio Revised Code sections 119.01 to 119.12, inclusive, Respondents are hereby notified that they are entitled to an adjudicatory hearing if a written request is received by the Division within thirty (30) days from the date of mailing of this Notice. At the hearing, Respondents may appear in person, by their attorney(s), or together with their attorney(s), or Respondents may present their positions, arguments, or contentions in writing, and that at the hearing they may present evidence and examine witnesses appearing for or against them.

FURTHER, IT IS ORDERED THAT, if no hearing is timely requested, an order to **CEASE AND DESIST** may be issued.

JLH/tb

WITNESS MY HAND AND THE OFFICIAL SEAL OF THIS DIVISION at
Columbus, Ohio this 14th day of June, 2013.



Andrea L. Seidt

Andrea L. Seidt, Commissioner of Securities